

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON,
AT SEATTLE

PACO Assurance Company, Inc., an Illinois
insurance company,

Plaintiff,

vs.

Peter J. Hanson, D.C., a Washington resident,

Defendant.

Cause No. 2:17-cv-00649

**COMPLAINT FOR DECLARATORY
RELIEF**

For its Complaint for Declaratory Relief, Plaintiff PACO Assurance Company, Inc.
("PACO") alleges as follows:

I. NATURE OF ACTION

1. Plaintiff PACO seeks a declaration pursuant to 28 U.S.C. § 2201(a), under a
Chiropractor Professional Liability Policy issued in Washington to defendant Peter J. Hanson,
D.C., declaring the extent of PACO's obligation, if any, to defend Peter J. Hanson, D.C. with
respect to claims asserted in an underlying lawsuit in this District, to wit: *State Farm Mutual
Automobile Insurance Company and State Farm Fire and Casualty Company v. Peter J.
Hanson, P.C. D/B/A Hanson Chiropractic, et al.*, Case No. 2:16-cv-01085-RSL in the United

COMPLAINT FOR DECLARATORY RELIEF – 1
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1 States District Court for the Western District of Washington at Seattle (the “Underlying
2 Action”). PACO asserts that it has no duty to defend any claims asserted in the Underlying
3 Action.

4 **II. PARTIES**

5 2. Plaintiff PACO Assurance Company, Inc. is an Illinois corporation having its
6 principal place of business in Franklin, Tennessee. PACO is authorized to do business in the
7 State of Washington.

8 3. On information and belief, defendant Peter J. Hanson, D.C. (“Dr. Hanson”) is a
9 resident of Snohomish County, Washington. On information and belief, Peter J. Hanson, D.C.
10 is a chiropractor licensed to practice in the state of Washington and he operates a chiropractic
11 business in Snohomish County, Washington. On information and belief, the “Peter J. Hanson”
12 named as a defendant in the Complaint in the Underlying Action is one and the same with Peter
13 J. Hanson, D.C.

14 **III. JURISDICTION AND VENUE**

15 4. Subject Matter Jurisdiction. This Court has subject matter jurisdiction over this
16 case pursuant to 28 U.S.C. § 1332(a)(1) because this controversy is between citizens of
17 different states and because the matter in controversy exceeds, exclusive of interest and costs,
18 the sum specified by 28 U.S.C. § 1332(a).

19 5. Personal Jurisdiction. This Court has personal jurisdiction over Dr. Hanson
20 because he is a resident of the State of Washington. Plaintiff PACO has submitted to the
21 jurisdiction of this Court.

22 6. Venue. Venue is properly laid in this Court because, on information and belief,
23 Dr. Hanson resides in Snohomish County, Washington.

1 **IV. FACTUAL ALLEGATIONS**

2 7. PACO issued policy number 11-2CH-0021766, A Chiropractor Professional
3 Liability Policy, to Peter J. Hanson, D.C., as Named Insured (“the Policy”). The Policy
4 identifies the business address of the Named Insured as 11314 4th Ave. W., Suite 103, Everett,
5 WA 98204. The Policy was in effect for the period 03/31/2011 to 03/31/2012.

6 8. The Policy was cancelled effective 03/30/2012; however, a Chiropractor
7 Professional Liability Policy Optional Extension Coverage Endorsement (form no. OUM-C-
8 1015 Ed. 1-08) was added to the Policy. Such endorsement specifies that “This endorsement
9 covers claims that would have been covered under your policy, had they been reported before
10 the date your policy ended[.]” That endorsement applies only to claims arising from conduct
11 which occurred no earlier than 03/31/1995 and no later than 03/31/2012.

12 9. On or about July 14, 2016, State Farm Mutual Automobile Insurance Company
13 and State Farm Fire and Casualty Company (collectively, “State Farm”) filed a lawsuit in U.S.
14 District Court for the Western District of Washington at Seattle against Peter J. Hanson and
15 Peter J. Hanson, P.C. D/B/A Hanson Chiropractic, Case No. 2:16-cv-01085-RSL (hereinafter
16 the “Underlying Action”). A copy of the Complaint in said action (dkt. 1 in case no. 2:16-cv-
17 1085, W.D. Washington) (the “Underlying Complaint”) is attached hereto as Exhibit A and is
18 incorporated herein as though its allegations were fully set forth.

19 10. The Underlying Complaint alleges fraud and unjust enrichment pursuant to
20 intentional, knowing and willful participation in a fraudulent billing scheme to obtain insurance
21 coverage and reimbursements from State Farm. As to the allegations against Dr. Hanson, it
22 alleges that Dr. Hanson engaged in fraudulent treatment, charting and billing practices and
23 submitted “false, misleading, and/or fraudulent bills” to State Farm to obtain payments from

1 State Farm under PIP and UIM coverages issued by State Farm to Dr. Hanson's patients. State
2 Farm alleges causes of action against Dr. Hanson for common law fraud and unjust enrichment.
3 As to the claims against Dr. Hanson, State Farm seeks compensatory damages, interest, costs,
4 and other relief that the court may deem appropriate.

5 11. On or about August 5, 2016, Dr. Hanson or his representative notified PACO of
6 the Underlying Action and tendered his defense to PACO under the Policy.

7 12. On or about August 19, 2016, PACO issued a reservation of rights letter,
8 notifying Dr. Hanson that PACO would defend him against the Underlying Action, but that
9 such defense would be under a full and complete reservation of PACO's rights to deny
10 coverage for any and all claims made by Plaintiffs in the Underlying Action. PACO further
11 reserved the right to file a declaratory relief action and to withdraw from providing a defense.

12 14. PACO is currently paying for defense of Dr. Hanson, under reservation of
13 rights.

14 15. The allegations of the Underlying Complaint do not trigger a duty to defend Dr.
15 Hanson under the Policy for many reasons, including, but not limited to, at least the following:

- 16 a. The allegations do not seek "damages" as that term is defined in the
17 Policy.
18 b. The allegations do not seek sums because of a "malpractice incident" as
19 that term is defined in the Policy.
20 c. The conduct alleged in the Underlying Complaint does not constitute
21 "professional services" as that term is defined in the Policy.
22 d. Declaratory relief does not constitute a "claim" as that term is defined in
23 the Policy.

- 1 e. “Damages,” if any, sought in the Underlying Action are not “because of
2 malpractice committed” by an insured.
- 3 f. To the extent that any conduct giving rise to liability occurred prior to
4 03/31/1995 or after 03/31/2012, liability for such acts is not covered by
5 the Policy.
- 6 g. The Policy does not apply to “any **claim** based upon or arising out of any
7 dishonest, fraudulent, criminal, or malicious acts, errors or omissions
8 intentionally committed by or at the direction of the **Insured**[.]”
- 9 h. The Policy does not apply to “any act committed in violation of any law
10 or ordinance[.]”
- 11 i. The Policy does not apply to “any liability arising out of the Insured’s
12 activities in his capacity as proprietor, superintendent, executive officer,
13 director, partner or trustee of any . . . laboratory or other business
14 enterprise not named as an Insured under this policy[.]”
- 15 j. The Policy does not apply to the use of X-ray except for diagnostic
16 purposes.
- 17 k. The Policy does not apply “to any liability of any **Insured** for the failure
18 of chiropractic **professional services** to conform with any advertising,
19 oral or written promise, contract or representation[.]”
- 20 l. The Policy does not apply “to any liability of any **Insured** arising out of
21 intentionally falsifying, destroying or obliterating healthcare records or
22 other documents or evidence[.]”
23

1 m. The Policy does not apply to “an **Insured’s** actual gain of personal
2 profit, or advance to which the **Insured** is not entitled[.]”

3 n. The Policy does not apply to “remuneration paid to an **Insured** if such
4 payment is held by the courts to be in violation of the law[.]”

5 o. No element of relief sought is covered by the Policy.

6 p. PACO did reserve, and continues to reserve, the right to rely on any
7 other basis permitted by law or the Policy for denying coverage and/or a
8 defense.

9 **V. CAUSE OF ACTION FOR DECLARATORY RELIEF**

10 16. PACO realleges the preceding paragraphs as though fully set forth herein.

11 17. An actual controversy within the jurisdiction of this Court exists between PACO
12 and Dr. Hanson regarding the existence and scope of coverage under the Policy with respect to
13 the Underlying Action.

14 18. PACO is entitled to a declaration regarding the extent of its obligation, if any, to
15 defend any allegation of the Underlying Action.

16 19. PACO is entitled to a declaration declaring that PACO may immediately cease
17 and withdraw from any further defense of Dr. Hanson in the Underlying Action.

1 **VI. PRAYER FOR RELIEF**

2 WHEREFORE, PACO prays for the following relief:

- 3 1. For a declaration that PACO has no duty to defend Peter J. Hanson, D.C. under
4 the Policy in the Underlying Action;
- 5 2. For a declaration that PACO may immediately withdraw from providing any
6 further defense to Peter J. Hanson, D.C. in the Underlying Action;
- 7 3. For attorney fees and costs as permitted by law; and
- 8 4. For such further relief as this Court may deem just and equitable.

9 DATED this 25 day of April, 2017.

10 SOHA & LANG, P.S.

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